IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

Crl.Rev.Pet.No. 2916 of 2007()

CRA.1075/2005 of ADDL.SESSIONS COURT, ERNAKULAM
CC.331/2001 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

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REVN. PETITIONER: APPELLANT/ACCUSED:

ANTHRAI, AGED 45 YEARS, S/O.AHAMMED,
BANGARA HOUSE, ASOKAPURAM, ALUVA.

BY ADV. SRI.P.B.ASOKAN

RESPONDENTS: RESPONDENT/COMPLAINANT:

THE STATE OF KERALA REPRESENTED BY
SUB INSPECTOR OF POLICE, ALUVA.
(CRIME NO.893/2000), BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 24/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2916 OF 2007 D

Dated this the 24th day of August, 2007

O R D E R

Heard both sides.

2. The revision petitioner, who was the first accused stands concurrently convicted for offences punishable under sections 452, 324, 323 and 341 IPC.

3. The case of the prosecution is that on 13.10.2000 at about 9.30 a.m., in furtherance of their common intention, the 3 accused persons, including the revision petitioner, trespassed into the house of PW1 and the first accused wrongfully restrained her and beat her on the back with a cudgel and threatened to kill her and when PW1 ran out from the house, the first accused kicked her causing pain.

4. On the side of the prosecution, 7 witnesses were examined as PWs 1 to 7 and 5 documents were marked as Exts.P1 to P5.

5. After the close of the prosecution evidence, the accused were questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence.

6. The learned Magistrate after trial, as per judgment dated 29.11.05 found the revision petitioner/1st accused guilty of the aforesaid offences and imposed the sentence referred to above. The 3rd accused was acquitted. The second accused had died during trial.

7. Aggrieved by the conviction and sentence, the revision petitioner preferred an appeal as Crl.Appeal No.1075/05 before the Additional Sessions Court (Adhoc-II), Ernakulam, which was dismissed as per judgment dated 24.3.2007. It is the said judgment which is assailed in this revision.

8. Eventhough the learned counsel for the revision petitioner challenged the conviction recorded against the revision petitioner, I am not inclined to interfere with the conviction as it is based on the credible testimony of PW1, the injured, and PW6 who is the mother of PW1. In the absence of any infirmity in the appreciation of evidence by the courts below which are the final courts of fact, this court, sitting in the rarefied revisional jurisdiction, will be loathe to interfere with the said conviction which is accordingly confirmed.

9. What now survives for consideration is the question of adequacy or otherwise of the sentence imposed on the revision petitioner. There was a counter case arising out of the same occurrence and it ended in acquittal of the accused. There was a long civil dispute between the parties. The injuries sustained by PW1 as

evidenced by Ext.P4 wound certificate show that they are relatively minor injuries. In the facts and circumstances of the case, I do not think that the revision petitioner deserves penal servitude by way of incarceration. I am of the view that an appropriate fine and compensation will serve the ends of justice Accordingly, the sentence imposed on the revision petitioner is set aside and instead he is sentenced to pay a fine of Rs.4,000/- (Rupees four thousand only) and on default to pay the fine, to suffer simple imprisonment for one month under section 452 IPC, to pay a fine of Rs.5,000/- (Rupees five thousand only) and on default to pay the fine, to suffer simple imprisonment for one month under section 324 IPC and Rs.500/- (Rupees five hundred only) each for the offences under sections 323 and 341 IPC and on default to pay the fine, to suffer simple imprisonment for 15 days for each default. From out of the fine, as and when realised, a sum of Rs.4,000/- (Rupees four thousand only) shall be paid to PW1 by way of compensation. The fine amount shall be remitted within 45 days.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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